IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MELINDA ROGERS

4200 Stirling St., 1st Floor

Philadelphia, PA 19135

Plaintiff,

v.

PHILADELPHIA GAS WORKS 800 W. Montgomery Avenue Philadelphia, PA 19122

Defendant.

CIVIL ACTION

NO.

JURY TRIAL DEMANDED

CIVIL ACTION COMPLAINT

Plaintiff, Melinda Rogers (hereinafter referred to as "Plaintiff" unless otherwise indicated), by and through her undersigned counsel, hereby avers as follows:

I. Introduction

1. Plaintiff has initiated this action to redress violations by Defendant of the Family and Medical Leave Act ("FMLA" - 29 U.S.C. §§ 2601 *et. seq.*), the Americans with Disabilities Act ("ADA" - 42 USC §§ 12101 *et. seq.*), the Pennsylvania Human Relations Act ("PHRA"), and the Philadelphia Fair Practices Ordinance, Phila. Code 9-1100 *et seq.* ("PFPO"). As a direct consequence of Defendant's unlawful actions, Plaintiff seeks damages as set forth herein.

¹ Plaintiff's claims under the PHRA and PFPO are referenced herein for notice purposes. She is required to wait 1 full year from date of dual-filing with the EEOC before those claims become administratively exhausted. Once exhausted, Plaintiff will seek to amend her complaint to add those additional claims, which will identically mirror her federal claims under the ADA.

II. Jurisdiction and Venue

- 2. This Court may properly maintain jurisdiction over Defendant because Defendant's contacts with this state and this judicial district are sufficient for the exercise of jurisdiction over Defendant to comply with traditional notions of fair play and substantial justice, satisfying the standard set forth by the United States Supreme Court in <u>International Shoe Co v. State of</u> Washington, 326 U.S. 310 (1945) and its progeny.
- 3. This action is initiated pursuant to a federal law. The United States District Court for the Eastern District of Pennsylvania has original subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 because the claims arise under the laws of the United States.
- 4. Venue is properly laid in this District pursuant to 28 U.S.C. §§ 1391(b)(1) and (b)(2), because Defendant resides in and/or conduct business in this judicial district and because a substantial part of the acts and/or omissions giving rise to the claims set forth herein occurred in this judicial district.

III. Parties

- 5. The averment of the foregoing paragraph is hereby incorporated by reference as if set forth fully herein.
 - 6. Plaintiff is an adult individual residing at the above-captioned address.
- 7. Philadelphia Gas Works ("PGW" or "Defendant"), is a municipally owned gas company operating in Pennsylvania with a principal place of business at the above-captioned address.

8. At all times relevant herein, Defendant acted by and through its agents, servants, and employees, each of whom acted at all times relevant herein in the course and scope of their employment with and for Defendant.

IV. Factual Background

- 9. The averments of the foregoing paragraphs are hereby incorporated by reference as if set forth fully herein.
- 10. Plaintiff was hired by Defendant on or about February 9, 2015 as a Call Center Specialist.
- 11. In total, Plaintiff was employed by Defendant for more than 5 years working out of the above-captioned Philadelphia location, until she was impermissibly terminated on or about December 7, 2020, as described *infra*.
- 12. During the relevant timeframe in this matter, Plaintiff was supervised by several individuals, including but not limited to Zayda Santiago (Supervisor).
- 13. Throughout her employment with Defendants, Plaintiff was a dedicated and hardworking employee who performed her job very well.
- 14. Plaintiff has an continues to suffer from disabilities, including but not limited to depression, anxiety and chronic migraines.
- 15. As a result of Plaintiff's aforesaid health conditions, Plaintiff is (at times) limited in her ability to perform some daily life activities, including but not limited to performing manual tasks, concentrating, thinking, and working (as well as other daily life activities)

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- 16. Despite her aforementioned health conditions and limitations, Plaintiff was still able to perform the duties of her job well with Defendants; however, Plaintiff did require reasonable medical accommodations at times.
- 17. Specifically, Plaintiff required accommodations from Defendant including intermittent time off from work to care and treat for her disabilities, for which she utilized leave under the Family and Medical Leave Act ("FMLA").
- 18. While Plaintiff has a long-term history of dealing with and treating for her aforementioned health conditions, her disabilities became worse in the years 2019 and 2020.
- 19. The (yet uncorrected) problem is that Defendant has exhibited one of the worst administrations of FMLA leave for employees in the greater Philadelphia area. In particular:
 - (A) Defendant has been sued numerous times for mishandling FMLA of employees;
 - (B) Defendant incorrectly handles FMLA paperwork on a pervasive basis;
 - (C) Defendant inaccurately counts or calculates FMLA usage on a pervasive basis;
 - (D) Defendant fails to follow written notice obligations to employees under the FMLA on a pervasive basis; and
 - (E) Defendant uses FMLA usage as a factor in taking adverse actions against employees.
- 20. Defendants ongoing mishandling of FMLA for many years on such a continual basis is illustrative of gross reckless indifference, intent, and a knowing failure to educate or remedy its improper FMLA administration prejudicing employees. During the course of the case, Plaintiff will demonstrate willfulness through continual FMLA violations over the span of many years (in addition to significant other evidence specific to Plaintiff).

- 21. By the September 2020 timeframe, it is believed that Plaintiff's semi-annual or annual certification for FMLA use had lapsed, however, Plaintiff was unclear as to whether her FMLA entitlements were fully exhausted for the following year or whether her certification for usage was deemed to expire, as Defendant failed to maintain proper communication or written updates in this regard.
- 22. As of September 2020, Defendant's management, including but not limited to Santiago, had been informed by Plaintiff on numerous occasions: (a) about her health history and various complications when occurring; (b) her FMLA needs over the prior year(s); and (c) that unfortunately as of the fall of 2020 she had no primary care physician because Plaintiff's had retired, which created substantial difficulty in Plaintiff finding a new one, getting any actual medical documentation, and trying to get a new FMLA certification for future needs (even requiring her to use Urgent Care instead of a regular doctor's office).
- 23. Because it is well known within Defendant that the entity as a whole may look for any reason to terminate someone who uses FMLA, Plaintiff went out of her way to work between September and November without missing time from work, leading her to: (a) work through pain and discomfort; (b) search for a new physician; and (c) try to get new FMLA documentation during this timeframe.
- 24. Unfortunately, Plaintiff became very sick between November 11, 2020 and through late November 2020 (a period of several weeks). Believing she had COVID, Plaintiff shared this with management, including but not limited to Santiago.
- 25. Plaintiff worked from home from on or about November 11, 2020 through on or about November 20, 2020, however, after taking a COVID test on or about November 21, 2020,

on or about November 23, 2020, Plaintiff called out of work because the physician whom she had seen (at Urgent Care) had verbally and in a note to her identified that she should quarantine and not work.²

- 26. Although Plaintiff continued to work following November 23, 2020, on or about December 7, 2020, approximately two (2) weeks later, Plaintiff was terminated.
- 27. Plaintiff was first informed of her termination verbally and she was thereafter sent a letter identifying the same. In both notifications, Plaintiff's alleged exhaustion of FMLA was referenced and Plaintiff was informed that she was being terminated for missing the <u>single day</u> of work on or about November 23, 2020.
- 28. Plaintiff was further told that she had no remaining sick time and had allegedly failed to provide a doctor's note for November 23, 2020.
- 29. Such a reason for termination, however, is discriminatory and entirely pretextual as:
 - a. Plaintiff understood her physician to have provided a doctor's note for this date to
 Defendant by facsimile, which she informed Defendant of and in fact offered to
 provide such a note after she was informed that it allegedly had not been received;
 - b. All of the time Plaintiff had missed prior to November 23, 2020 was either for FMLA usage, related to flareups of Plaintiff's disabilities, or other medical needs (accommodations under the ADA); therefore, Plaintiff was terminated for missing a *single day* of work past her protected medical leaves, with her prior leave obviously being counted negatively against her;

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² Fortunately, Plaintiff tested negative for COVID and continued to work.

- c. Other employees who did not utilize the FMLA or accommodations under the ADA would miss days, weeks, or months from work at varying times and under different circumstances without facing termination;
- d. Plaintiff had taken protected medical leave in exceedingly close proximity to being terminated, including in the days leading up to her ultimate separation; and
- e. Defendant had previously displayed its animosity towards Plaintiff's use of medical leave, as Plaintiff had been denied raises for her history of absences in 2019 and 2020, and was told by management, including Santiago, to "watch your back" in reference to her use of FMLA leave. Moreover, members of Defendant's management had rolled their eyes, grunted at Plaintiff, and visibly showed their disdain for employees such as Plaintiff using FMLA or other leave for their health conditions.
- 30. Essentially, Defendant waited for the first opportunity it could find to terminate Plaintiff for her use of prior medical leave under the FMLA and ADA, considering such prior leave in terminating her for a *single absence* under highly pretextual circumstances, in a manner disparately from other non-disabled employees.
- 31. Therefore, Plaintiff submits that Defendant terminated her because of her disabilities, her use of FMLA leave and accommodations under the ADA, and to prevent her from utilizing such leave in the future, in violation of the FMLA and ADA.

Count I <u>Violations of the Family and Medical Leave Act ("FMLA")</u> (Interference & Retaliation)

- 32. The foregoing paragraphs are incorporated herein in their entirety as if set forth in full.
- 33. Plaintiff was an eligible employee under the definitional terms of the FMLA, 29 U.S.C. § 2611(a)(i)(ii).
- 34. Plaintiff met all FMLA eligibility requirements throughout her employment, and Plaintiff exercised her rights to use intermittent FMLA leave.
- 35. Plaintiff was terminated unlawfully as outlined throughout this Complaint, and these actions as stated herein constitute interference, discrimination, and retaliation violations of the FMLA.

Count II <u>Violations of the Americans with Disabilities Act, as Amended ("ADA")</u> (Actual/Perceived/Record of Disability Discrimination and Retaliation)

- 36. The foregoing paragraphs are incorporated herein in their entirety as if set forth in full.
- 37. Plaintiff suffers from qualifying health conditions under the ADA which affected (at times) her ability to perform some daily life activities, as outlined *supra*.
- 38. Despite Plaintiff's aforementioned health conditions and limitations, she was still able to perform the duties of her job well with Defendant, but at times required reasonable accommodations, such as intermittent medical leave.

- 39. As outlined throughout this Complaint, Plaintiff was terminated because of: (1) her known and/or perceived health problems; (2) her record of impairment; (3) her requested accommodations; and/or (4) in retaliation for her need for reasonable accommodations.
 - 40. These actions as aforesaid constitute violations of the ADA, as amended.

 WHEREFORE, Plaintiff prays that this Court enter an Order providing that:
- B. Defendant is to compensate Plaintiff, reimburse Plaintiff and make Plaintiff whole for any and all pay and benefits Plaintiff would have received had it not been for Defendant's illegal actions, including but not limited to past lost earnings, future lost earnings, salary, pay increases, bonuses, medical and other benefits, training, promotions, pension, and seniority. Plaintiff should be accorded those benefits illegally withheld from the date she first suffered retaliation/interference at the hands of Defendant until the date of verdict;
- C. Plaintiff is to be awarded liquidated damages, as permitted by applicable law, in an amount determined by the Court or trier of fact to be appropriate to punish Defendant for its willful, deliberate, malicious and outrageous conduct and to deter Defendant or other employers from engaging in such misconduct in the future;
- D. Plaintiff is to be awarded the costs and expenses of this action and reasonable legal fees as provided by applicable federal and state law;
- E. Any verdict in favor of Plaintiff is to be molded by the Court to maximize the financial recovery available to the Plaintiff in light of the caps on certain damages set forth in applicable federal law; and

F. Plaintiff's claims are to receive trial by jury to the extent allowed by applicable law. Plaintiff has also endorsed this demand on the caption of this Complaint in accordance with Federal Rule of Civil Procedure 38(b).

Respectfully submitted,

KARPF, KARPF, & CERUTTI, P.C.

By:

Ari R. Karpf 3331 Street Road Two Greenwood Square Suite 128 Bensalem, PA 19020 (215) 639-0801

Date: July 28, 2021

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CASE MANAGEMENT TRACK DESIGNATION FORM

| , | | CIVIL ACTION | • | | |
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| Melinda Rogers v. | ; ; | | | | |
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| (c) Arbitration - Cases required to be designated for arbitration under Local Civil Rule 53.2 | | | | | |
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| 7/28/2021 | | Plaintiff | | | |
| Date | Attorney-at-law | Attorney for | | | |
| (215) 639-0801 | (215) 639-4970 | akarpf@karpf-law.com | | | |
| Telephone | FAX Number | E-Mail Address | | | |
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(Civ. 660) 10/02

Case 2:21-cv-03351-GMPED ROCHES PRICTICOLORY/28/21 Page 12 of 13 FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DESIGNATION FORM

(to be used by counsel or pro se plaintiff to indicate the category of the case for the purpose of assignment to the appropriate calendar)

| Address of Plaintiff: 4200 Stirling Street, 1st Floor, Philadelphia, PA 19135 | | | | | | | |
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| Address of Plaintiff: | | | | | | | |
| Place of Accident, Incident or Transaction: Defendant's place of business | | | | | | | |
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| RELATED CASE, IF ANY: | | | | | | | |
| Case Number: Judge: Date Terminated | 1: | | | | | | |
| Civil cases are deemed related when Yes is answered to any of the following questions: | | | | | | | |
| 1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court? | | | | | | | |
| 2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit Yes No X pending or within one year previously terminated action in this court? | | | | | | | |
| 3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action of this court? | | | | | | | |
| 4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights Yes No X | | | | | | | |
| I certify that, to my knowledge, the within case is / is not related to any case now pending or within one year previously terminated action in this court except as noted above. | | | | | | | |
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| Attorney-at-Law / Pro Se Plaintiff Attorney I.D. # (if applicable) | | | | | | | |
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Case 2:21-cv-03351-CMR_Document 1_Filed 07/28/21 Page 13 of 13 CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as

| provided by local rules of court purpose of initiating the civil do | . This form, approved by the ocket sheet. (SEE INSTRUCT | e Judicial Conference of the ITONS ON NEXT PAGE OF T | ne United States in September 19' THIS FORM.) | 74, is required for the use of th | e Clerk of Court for the | |
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| I. (a) PLAINTIFFS | | | DEFENDANTS | | | |
| ROGERS, MELINDA | | | PHILADELPHIA GAS WORKS | | | |
| (b) County of Residence of First Listed Plaintiff Philadelphia (EXCEPT IN U.S. PLAINTIFF CASES) | | | County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY) NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED. | | | |
| (c) Attorneys (Firm Name, A | Address, and Telephone Number |) | Attorneys (If Known) | | | |
| Karpf, Karpf & Cerutti, l Suite 128, Bensalem, PA | · · · · · · · · · · · · · · · · · · · | * | ± 1 | | | |
| II. BASIS OF JURISDICTION (Place an "X" in One Box Only) 1 U.S. Government X 3 Federal Question | | II. CITIZENSHIP OF PI (For Diversity Cases Only) | | Place an "X" in One Box for Plainti and One Box for Defendant) PTF DEF | | |
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| 2 U.S. Government Defendant | 4 Diversity (Indicate Citizenshi | ip of Parties in Item III) | Citizen of Another State | 2 Incorporated <i>and</i> Pri of Business In A | | |
| IV NATURE OF CHIE | D | | Citizen or Subject of a Foreign Country | 3 Foreign Nation | 6 6 | |
| IV. NATURE OF SUIT | | ly) ORTS | FORFEITURE/PENALTY | Click here for: Nature of BANKRUPTCY | of Suit Code Descriptions. OTHER STATUTES | |
| 110 Insurance 120 Marine 130 Miller Act 140 Negotiable Instrument 150 Recovery of Overpayment & Enforcement of Judgment 151 Medicare Act 152 Recovery of Defaulted Student Loans (Excludes Veterans) 153 Recovery of Overpayment of Veteran's Benefits 160 Stockholders' Suits 190 Other Contract 195 Contract Product Liability 196 Franchise REAL PROPERTY 210 Land Condemnation 220 Foreclosure 230 Rent Lease & Ejectment 240 Torts to Land 245 Tort Product Liability 290 All Other Real Property | PERSONAL INJURY 3 10 Airplane 3 15 Airplane Product Liability 3 20 Assault, Libel & Slander 3 30 Federal Employers' Liability 3 440 Marine 3 445 Marine Product Liability 3 550 Motor Vehicle Product Liability 3 60 Other Personal Injury 3 62 Personal Injury - Medical Malpractice CIVIL RIGHTS 440 Other Civil Rights 441 Voting 442 Employment 443 Housing/ Accommodations 445 Amer. w/Disabilities - Employment 446 Amer. w/Disabilities - Other 448 Education | PERSONAL INJURY 365 Personal Injury - Product Liability 1367 Health Care/ Pharmaceutical Personal Injury Product Liability 368 Asbestos Personal Injury Product Liability PERSONAL PROPERT 370 Other Fraud 371 Truth in Lending 380 Other Personal Property Damage 385 Property Damage 385 Property Damage Product Liability PRISONER PETITIONS Habeas Corpus: 463 Alien Detainee 510 Motions to Vacate Sentence 530 General 535 Death Penalty Other: 540 Mandamus & Other 550 Civil Rights 555 Prison Condition 560 Civil Detainee - Conditions of Confinement | G25 Drug Related Seizure of Property 21 USC 881 G90 Other LABOR T10 Fair Labor Standards Act T20 Labor/Management Relations T40 Railway Labor Act T51 Family and Medical Leave Act T90 Other Labor Litigation T91 Employee Retirement Income Security Act IMMIGRATION 462 Naturalization Application MGRATION 465 Other Immigration Actions | ' 422 Appeal 28 USC 158 ' 423 Withdrawal | □ 375 False Claims Act ' 376 Qui Tam (31 USC 3729(a)) □ 400 State Reapportionment □ 410 Antitrust □ 430 Banks and Banking □ 450 Commerce □ 460 Deportation □ 470 Racketeer Influenced and Corrupt Organizations □ 480 Consumer Credit □ 490 Cable/Sat TV □ 850 Securities/Commodities/ Exchange □ 890 Other Statutory Actions □ 891 Agricultural Acts □ 893 Environmental Matters □ 895 Freedom of Information Act □ 896 Arbitration □ 899 Administrative Procedure Act/Review or Appeal of Agency Decision □ 950 Constitutionality of State Statutes | |
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| VI. CAUSE OF ACTIO | ADA (42USC121 | utute under which you are 01); FMLA (29USC use: ADA, FMLA, PHR | | tes unless diversity): | | |
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JUDGE

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APPLYING IFP

MAG. JUDGE